

**UNITED STATES OF AMERICA**  
**MERIT SYSTEMS PROTECTION BOARD**

CHARLES A. KERR, II,  
appellant,  
  
v.  
  
OFFICE OF PERSONNEL MANAGEMENT,  
agency.  
(CSA 2 191 547)

DOCKET NUMBER  
SF831M8510269  
  
Date: Oct 31 1985

BEFORE

Herbert E. Ellingwood, Chairman  
Maria L. Johnson, Vice Chair  
Dennis M. Devaney, Member

## OPINION AND ORDER

The appellant, a retired federal employee, filed a timely petition for appeal from an Office of Personnel Management (agency) reconsideration decision finding that appellant had received an overpayment of his annuity in the amount of \$984.00. After a hearing, at which the agency did not appear, the presiding official reversed the agency's determination. He found that the agency had the burden of proving the amount of the overpayment and failed to carry that burden. The agency filed a timely petition for review contending, in substance, that the agency had established the amount of the overpayment and that even if it had not, the presiding official should have remanded the case to the agency rather than reverse the agency decision. The agency petition for review is GRANTED under 5 U.S.C. § 7701(e)(1).

The relevant facts underlying this appeal may be described as follows:

The agency informed the appellant that because he became eligible to receive Social Security benefits, by reason of his prior military service, his Civil Service retirement annuity should have been reduced on February 1, 1983. The appellant received the unreduced retirement benefits for 15 months, until May 1984. The agency advised the appellant of the overpayment and the schedule of repayments to be deducted from future annuity checks. The appellant requested the agency to reconsider its decision. In its reconsideration decision the agency affirmed its determination that appellant had received an overpayment and set forth the repayment schedule. The appellant then filed an appeal with the Board's San Francisco Regional Office. In his initial decision the presiding official found the agency established that the appellant was overpaid from the time he became eligible for social security benefits, but that the agency failed to show how it arrived at the figure of \$63.00 per month. Based on this, the presiding official reversed the agency's decision. This was error.

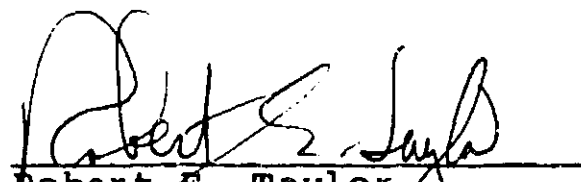
Section 307(b) of P.L. 97-253 contains the requisite formula for determining the amount of any reduction in a Civil Service annuity due to an annuitant's eligibility for social security benefits (SSB). The agency, in its reconsideration decision, noted that this law provides the method of computation of reduced annuities. The agency also stated that the Social Security Administration (SSA) provided information from which it calculated the reduction. This information was also included in the evidence of record before the presiding

official. Its accuracy was not challenged by the appellant. Although the agency did not include its actual mathematical computations, the evidence of SSA information contained in the record as well as the formula in the statute provides a sufficient evidentiary basis upon which the Board can find that the agency correctly determined that appellant's Civil Service annuity was to be reduced by \$63.00 per month, from February 1, 1983 to March 31, 1983, and \$66.00 per month from April 1, 1983 to April 30, 1984. Since there is no dispute that appellant became eligible for SSB on February 1, 1983, and his Civil Service annuity was not reduced by the requisite amount per month until May 1984, we find the presiding official erred in finding that the agency failed to show, by a preponderance of the evidence, that appellant was overpaid.

Accordingly, the initial decision is REVERSED and the reconsideration decision is SUSTAINED. This is the final decision of the Merit Systems Protection Board. 5 C.F.R. § 1201.113(c).

Appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review, if the court has jurisdiction, of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.